

REMARKS

In the Office Action dated October 2, 2003, claims 1-14 were presented for examination. The drawing figures were objected to for not showing the medium and means of claims 9-14. In addition, figure 5A was objected to for not including a legend indicating prior art. Claims 1, 5, 6, 9, and 13 were rejected under 35 U.S.C. §102(a) as being anticipated by *Applicant's Admitted Prior Art (AAPA)*. Claims 1, 6, and 9 were rejected under 35 U.S.C. §102(b) as being anticipated by *Smith*, U.S. Patent No. 5,832,068.

Applicant wishes to thank the Examiner for the careful and thorough review and action on the merits in this application. The following remarks are provided in support of the pending claims and responsive to the Office Action of October 2, 2003 for the pending application.

I. Objection to the Drawing Figures

In the Office Action dated October 2, 2003, the Examiner objected to the drawing figures. More specifically, the Examiner indicated that the article of claims 9-14 does not adequately show the means and medium. Applicant respectfully objects to the Examiner's objection. As noted in the application and associated claims 9-14, Applicant's invention is a computer implemented application. "In a typical computer application, system components are often represented in a "block diagram" format, i.e., a group of hollow rectangles representing the elements of the system." MPEP §2106.02. Applicant has provided diagrams 1-4 in the form of flow charts and figures 5A-5L in the form of tree diagrams to illustrate the implementation of applicant's invention as a method, a data structure, and an article. Accordingly, Applicant respectfully requests the Examiner to remove the objection to the drawing figures with respect to claims 9-14.

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In addition to the objection to the drawing figures discussed above, Applicant has objected to Fig. 5A for not providing a proper legend. Applicant has amended Fig. 5A, enclosed herein, to include the legend "Prior Art", as requested by the Examiner. Accordingly, Applicant respectfully requests that the Examiner to remove the objection to Fig. 5A.

II. Rejection of claims 1, 5, 6, 9, and 13 under 35 U.S.C. §102(b)

In the Office Action of October 2, 2003, the Examiner assigned to the application rejected claims 1, 5, 6, 9, and 13 under 35 U.S.C. §102(b) as being anticipated by *Applicants Admitted Prior Art* (*AAPA*). The *AAPA* relates to merging two or more input data streams into a single sorted output stream. More specifically, *AAPA* shows omission of a swap of key values for key values that are duplicate. The *AAPA* further notes that prior art routines for performing key comparisons are aware of duplicate key values. However, *AAPA* does not show alternating between input streams with duplicate key values, as claimed by Applicant in amended claims 1, 6, and 9. Rather, *AAPA* is limited to showing an indication that the data items may be duplicates. Accordingly, the *AAPA* fails to illustrate an equitable solution for input streams containing duplicate data items.

after amendment

Applicant's invention resolves the problem associated with duplicate values found in input streams, as opposed to acknowledging the presence thereof. The process of alternating between input streams containing duplicate key values reduces the quantity of sort-key comparisons required. Items from the input streams having duplicate values are evenly consumed rather than exhausting the duplicate values from one input stream at a time. Accordingly, Applicant's method for handling the duplicate values is more efficient and effective than the prior art.

There is no teaching in *AAPA* for pro-actively handling duplicate values in an input stream. Nor is there a teaching in *AAPA* to alternate between input streams containing duplicate values. In order for the claimed invention to be anticipated under 35 U.S.C. §102(b), the prior art must teach all claimed limitations presented by the claimed invention. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F. 2d 628, 631, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987)). As mentioned above, *AAPA* does not show all of the elements as claimed by Applicant in pending amended claims 1, 6, and 9. Specifically, *AAPA* does not show the process of alternating between input streams bearing duplicate data items, rather *AAPA* merely shows acknowledgment

of the existence of a duplicate data item. Accordingly, *AAPA* clearly fails to teach the limitations pertaining to alternating between data streams containing duplicate data items as presented in Applicant's pending claims 1, 5, 6, 9, and 13.

III. Rejection of claims 1, 6, and 9 under 35 U.S.C. §102(b)

In the Office Action dated October 2, 2003, the Examiner assigned to the application rejected claims 1, 6, and 9 under 35 U.S.C. §102(b) as being unpatentable over *Smith*, U.S. Patent No. 5,832,068. *Smith* relates to a method of excluding duplicate data records. Upon receiving the data record, a unique identifier is assigned to the record. Thereafter, a record excluder compares an account number portion of the identifier with the record identifiers stored in a data record index. If the excluder determines that the data record is a duplicate record, the data record of the previously received data record is transferred to an exclusion list while the new data record is added to the data record index. Accordingly, *Smith* maintains an active list of data records and an exclusion list of data records, wherein the exclusion list pertains to duplicate data records.

Applicant's invention functions on a different principle than that taught in *Smith*, by performing a different act in response to a duplicate data item. The *Smith* patent places duplicate records in a secondary list, i.e. exclusion list. However, Applicant's invention does not utilize an exclusion list. Rather, in response to a duplicate record, Applicant alternates between input streams that contain the duplicate data items, as shown in amended claims 1, 6, and 9, and thereby manages the duplicate records without the need to create additional data records or utilize an exclusion list. In order for the claimed invention to be anticipated under 35 U.S.C. §102(b), the prior art must teach all claimed limitations presented by the claimed invention. "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP §2131 (citing *Verdegaal Bros. v. Union Oil Co. of California*, 814 F. 2d 628, 631, 2 U.S.P.Q. 2d 1051, 1053 (Fed. Cir. 1987)). As mentioned above, *Smith* does not show all of the elements as claimed by Applicant in pending claims 1, 6, and 9. Specifically, *Smith* does not provide support for alternating between input streams in response to a duplicate data item, rather *Smith* merely substitutes the new data

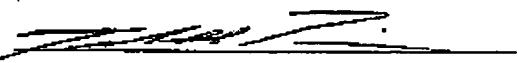
item for the old data item, and places the old data item in an exclusion list. See Col. 8, lines 12-28. Accordingly, *Smith* clearly fails to teach the limitations pertaining to the functionality following determination of a duplicate data item as presented in Applicant's pending amended claims 1, 6, and 9.

Finally, “[a] previous patent anticipates a purported invention only where, except for insubstantial differences, it contains all of the same elements operating in the same fashion to perform an identical function.” *Saunders v. Air-Flo Co.*, 646 F.2d 1201, 1203 (7th Cir. 1981) citing *Popeil Brothers, Inc. v. Schick Electric, Inc.*, 494 F.2d 162, 164 (7th Cir. 1974) (holding patents were not invalid as being anticipated by or obvious in light of prior art). *Smith* does not anticipate the invention of Applicant based upon the legal definition of anticipation. Although the prior art cited by the Examiner relates to data records and processing associated with duplicate records, *Smith* fails to show each and every element as presented in Applicant's claimed invention. Accordingly, Applicant respectfully requests that the Examiner remove the rejection of claims 1, 6, and 9, and to provide allowance of this application.

For the reasons outlined above, withdrawal of the rejection of record and an allowance of this application are respectfully requested.

Respectfully submitted,

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